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FACULTY OF LAW

INTERNATIONALLY TRAINED LAWYERS PROGRAM

Foundations of Canadian Law (ITLP101)

CASEBOOK – Volume 1

Instructor: Brigitte Geisler

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NCA Foundations of Canadian Law Casebook 2014 -2015

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Federation of Law Societies of Canada
National Committee on Accreditation

Syllabus

Foundations of Canadian Law

(Revised February 2014)

Candidates are advised that the syllabus may be updated from time-to-time without prior notice.

Candidates are responsible for obtaining the most current syllabus available.

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Foundations of Canadian Law

Objectives of the course:

- To provide NCA applicants with an introduction to and an overview of Canada's legal system and the role of law in Canadian society;
- To review various legal theories as they apply to Canadian law;
- To introduce the overarching legal framework within which the particular areas of law studied in other courses operate;
- To acquaint applicants with the various sources of Canadian Law;
- To compare the different branches of Canadian government and to analyze the relationships between them;
- To understand the Canadian treaty-making process and the implementation of international law into domestic law;
- To understand the special relationship Aboriginal Peoples have with the Canadian State; and, the contribution of various communities and peoples to the development of the Canadian legal system, in order to critically assess the impact of the Canadian legal system upon these communities;
- To understand the nature and function of judicial review; and the basic approaches to statutory interpretation.

Evaluation:

Evaluation for this course is based on a 100% open book examination.

The exam will consist of short answer questions, and/or short essay questions, and/or problem questions.

Short answer questions test candidates' ability to succinctly and correctly evaluate statements about material listed in the syllabus.

Essay questions test whether candidates' have critically engaged with the material listed in the syllabus and have started to form their own opinions about the strengths and weaknesses of of the arguments, principles, and doctrines discussed in those materials.

Problem questions test candidates' ability to identify legal issues, accurately state the applicable legal rules, apply those rules to novel situations, and draw conclusions supported by analysis. In other words, problem questions require the exercise of independent judgment grounded in the application of general rules to specific fact situations.

Core Materials:

Craik, N. et al, eds. *Public Law: Cases, Materials and Commentary, Second Edition* (Toronto: Emond Montgomery, 2011). http://www.emp.ca/index.php/hotproperty/property/law-school/public-law-cases-materials-and-commentary-2nd-edition

Required Canadian case law is indicated following each component and is available free of charge on CanLII: http://www.canlii.ca/

Supplemental Materials:

(for those interested in reading further on these topics, you may wish to consult the following list of sources available at most Canadian law libraries):

Aylward, Carol. *Canadian Critical Race Theory: Racism and the Law* – publication details at http://www.fernwoodpublishing.ca/author/Carol-A-Aylward/

Gerald Heckman. *The Role of International Human Rights Norms in Administrative Law* (Chapter 14 of Flood and Sossin, eds., Administrative Law in Context, 2nd Edition, Emond Montgomery 2011.)

Forcese, Craig & Aaron Freeman. *The Laws of Government: The Legal Foundations of Canadian Democracy, Second Edition* (Toronto: Irwin Law, 2011) - publication details at http://www.irwinlaw.com/store/product/656/the-laws-of-government--the-legal-foundations-of-canadian-democracy-second-edition

Forsey, Eugene A. *How Canadians Govern Themselves*, 7th ed. (Ottawa: Library of Parliament, 2010) (online) http://www.parl.gc.ca/About/Parliament/SenatorEugeneForsey/book/preface-e.html

Gall, Gerald L. *The Canadian Legal System*, 5th ed. (Toronto: Carswell, 2004).

Hogg, Peter W. *Constitutional Law of Canada,* 2011 Student Edition (Toronto: Thomson Carswell, 2011).

Horner, Jessie J. *Canadian Law and the Canadian Legal System* (Toronto: Pearson Education Canada, 2007).

Justice Canada, "Canada's System of Justice" (online) www.justice.gc.ca/eng/dept-min/pub/just/index.html

Monahan, Patrick J. *Constitutional Law* (3rd ed.)(Toronto: Irwin Law, 2006).

Components:

1. ***Basic Theories of Law:***

- Positivism and Natural law
- Feminist Perspectives on Law
- Critical Legal Studies
- Law and Economics

Required Readings:

- Craik, Chapter 2, pages 7-39;
- *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130;
- The Charter of Whiteness: Twenty-Five Years of Maintaining Racial Injustice in the Canadian Criminal Justice System (2008), 40 S.C.L.R. (2d) 655-686; available online: http://web4.uwindsor.ca/users/t/tanovich/bio.nsf/0/cbb2df71007aadcb852572300067cb7a/$FILE/TheCharterofWhiteness.pdf
- Elaine Craig, "Converging Queer and Feminist Legal Theories: Family Feuds and Family Ties (2010) http://works.bepress.com/cgi/viewcontent.cgi?article=1011&context=elaine_craig
- Andrei Marmor, "The Nature of Law" (2011). http://plato.stanford.edu/entries/lawphil-nature/
- Debra Parkes, "Precedent Unbound? Contemporary Approaches to Precedent in Canada" (2007) http://robsonhall.ca/mlj/sites/default/files/articles/parkes-precedent%20unbound.pdf
- Roger Shiner, "Precedent". http://ivr-enc.info/index.php?title=Precedent
- Leonard Rotman, "The Fusion of Law and Equity: A Canadian Perspective" (2011) http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1846694

2. ***Sources of Law:***

- Early Relations with Aboriginal Peoples
- Reception of English Common Law
- French Civil Law and Bijuralism
- Convention
- Statute
- Treaty

Required Readings:

- Craik, Chapter 2, pages 39-77;
- "Bijuralism and Harmonization: Genesis" available on the Department of Justice website: http://www.justice.gc.ca/eng/rp-pr/csj-sjc/harmonization/hfl-hlf/b1-f1/bf1.pdf ;
- *St-Hilaire v. Canada* (Attorney General), 2001 FCA 63, [2001] 4 F.C. 289;
- John Borrows, "Indigenous Legal Traditions" (2005) 19:167 Journal of Law and Policy; available on line: http://law.wustl.edu/journal/19/p167Borrows.pdf
- *Baker v. Canada* (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817 (skim headnote for factual context, read paragraphs 69-71, 78-81);
- *De Guzman v. Canada* (Minister of Citizenship and Immigration), 2005 FCA 436.
- Manirabona and Crepeau, "Enhancing the Implementation of Human Rights Treaties in Canadian Law" (2012). http://cjhr.ca/wp-content/uploads/2012/05/Manirabona-and-Crepeau-Enhancing-Implementation-with-Human-Rights-Treaties.pdf

3. Fundamental Principles of the Canadian Legal System:

- Rule of Law
- Parliamentary Sovereignty and Constitutional Supremacy
- Separation of Powers
- Judicial Independence

Required Readings:

- Craik, Chapter 3, pages 79-124;
- *Reference re Secession of Quebec,*[1998] 2 S.C.R. 217, paras. 35-48 & 49-82;
- *Singh v. Canada* (Attorney General), 2000 CanLII 17100 (F.C.A.), paras. 13-44;
- *Reference re Remuneration of Judges of the Prov. Court of P.E.I.; Ref re Independence and Impartiality of Judges of the Prov. Court of P.E.I.,* 1997 CanLII 317 (S.C.C.): http://scc.lexum.org/en/1997/1997scr3-3/1997scr3-3.html

4. Basic architecture, and workings, of the Canadian legal system

Introduction to the nature and function of judicial review, basic approaches to statutory interpretation, and the Canadian governmental and constitutional system.

- The nature and function of judicial review.
- The basic approaches to statutory interpretation.
- Relationship between branches of government: judicial review; constraints on power of each branch.
  - o *Executive Branch*: Structure; powers (i.e. delegated legislation); introduction to nature and role of administrative tribunals
  - o *Legislative Branch*: Structure and operation of Parliament; legislative process; formation of statute versus regulations; ethics and accountability
  - o *Judicial Branch*: Canadian court system; appointment of judges; judicial independence

Required Readings:

- Craik, chapters 4, 5, 6, 7 and 8. (except Mowat case at pp 500-508; replace with case below)
- *Canada (Canadian Human Rights Commission) v. Canada Attorney General* 2011 S.C.C. 53, (2011) 3 S.C.R. 471. http://www.canlii.org/en/ca/scc/doc/2011/2011scc53/2011scc53.pdf

5. Relationship of Aboriginal Peoples to the Canadian state: Selected topics

- Aboriginal Rights and Title
- Aboriginal Self-Government Aspirations
- The Modern Treaty Making Process

Required Readings:

- Section 91(24) of *The Constitution Act,* 1867 (U.K.), 30 & 31 Victoria, c. 3;
- Section 35 of *The Constitution Act,* 1982, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.
- Mary C. Hurley, "The Crown's Fiduciary Relationship with Aboriginal Peoples", Library of Parliament, Revised 2002 at: http://www.parl.gc.ca/Content/LOP/researchpublications/prb0009-e.htm
- "Highlights from the Report of the Royal Commission on Aboriginal Peoples: People to People, Nation to Nation" (1996) at: http://www.ainc-inac.gc.ca/ap/pubs/rpt/rpt-eng.asp

Required Readings Re: Aboriginal Rights:

- *R. v. Sparrow,* [1990] 1 S.C.R. 1075
- *R. v. Van der Peet,* [1996] 2 S.C.R. 507;
- *R. v. Sappier; R. v. Gray,* [2006] 2 S.C.R. 686, 2006 SCC 54
- *R. v. Powley,* 2003 SCC 43;
- *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, [2010] 2 S.C.R. 650
  http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/7885/index.do

Required Readings Re: Aboriginal Title:

- *Delgamuukw v. British Columbia,* [1997] 3 S.C.R. 1010;
- *William v. British Columbia*, 2012 BCCA 285, Leave to Appeal to SCC granted, 2013 SCC 34986
  http://canlii.ca/en/bc/bcca/doc/2012/2012bcca285/2012bcca285.html
- "Why Treaties?" [re: modern day treaties], BC Treaty Commission:
  http://www.bctreaty.net/files/pdf_documents/why_treaties.pdf

Required Readings Re: Aboriginal Treaties:

- *R. v. Marshall; R. v. Bernard,* [2005] 2 S.C.R. 220, 2005 SCC 43, 2005 SCC 43 [2005]

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Internet Sites for Provincial Legislation

This is a listing for all the provinces and is highly recommended	www.canlii.org
Ontario:	http://www.attorneygeneral.jus.gov.on.ca/english/legis/
British Columbia (Queen's Printer):	http://www.bclaws.ca/
Alberta (Queen's Printer):	http://www.qp.alberta.ca/

Supreme Court Judgments

http://scc.lexum.org/en/index.html